

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:
**The Boeing Company, King County and the
city of Seattle**

North Boeing Field/Georgetown Steam Plant
AGREED ORDER

No. DE

TO: POTENTIALLY LIABLE PERSONS

Mr. Steven Tochko
Environmental Remediation Manager
The Boeing Company
P.O. Box 3707
M/C 6Y-94
Seattle, WA 98124-2207

Mayor Greg Nickels
Mayor's Office
City of Seattle
P.O. Box 94749
Seattle, WA 98124-4749

Mr. Robert Burke, Airport Director
King County International Airport
7277 Perimeter Road South
Seattle, WA 98108

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Boeing Company, King County and the city of Seattle under this Agreed Order (Order) is to facilitate Ecology-conducted remedial action at a facility where there has been a release or threatened release of hazardous substances. Under the terms of this Order, the Boeing Company, King County and the city of Seattle agree to grant Ecology access to property they respectively own and/or control, located at 7370 E. Marginal Way South and 6700-13th Avenue South in Seattle, King County, WA., for the purpose of completing a Remedial Investigation/Feasibility Study (RI/FS) and for conducting one or more interim actions, if appropriate, for the North Boeing Field/Georgetown Steam Plant Site (Site). In addition, the Boeing Company, King County and the City of Seattle agree to make a payment of remedial action costs for future state-conducted remedial action at the Site. Ecology intends to use the funds received from the PLPs to complete the RI/FS and any interim action for the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or

she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The Boeing Company, King County and the city of Seattle agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Boeing Company's, King County's and the city of Seattle's responsibility under this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

A. Site: The Site is referred to as the North Boeing Field/Georgetown Steam Plant Site and is generally located at 7370 E. Marginal Way South and 6700-13th Avenue South in Seattle, King County, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology (Ecology) the Boeing Company, King County and the city of Seattle.

C. Potentially Liable Persons (PLPs): Refers to the Boeing Company, King County and the city of Seattle.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLPs:

A. The Site, which is defined by the extent of contamination caused by the release of hazardous substances, includes land impacted by industrial practices at the Georgetown Steam Plant (GTSP) and North Boeing Field (NBF) properties which are located northeast and east of

Slip 4, respectively, and approximately 4 miles south of downtown Seattle. The approximate Site boundaries study area is shown in Exhibit A. Slip 4 is part of the Lower Duwamish Waterway (LDW) Superfund site. The GTSP is located near the intersection of Warsaw and Ellis Avenue South near the northwest corner of King County International Airport (KCIA). The GTSP property contains an old powerhouse that currently houses the Georgetown Powerplant Museum. A condenser pit beneath the powerhouse is connected to an underground concrete tunnel that discharges into a flume (the GTSP flume). The GTSP flume extends for approximately 0.4 mile from the powerhouse into the head of Slip 4.

The city of Seattle owns the 7.29-acre property that contains the powerhouse and property adjacent to the GTSP flume. NBF is bounded to the northeast by Ellis Avenue South, the southeast by South Norfolk Street, the northeast by Airport Way, and the southwest by East Marginal Way South. The Boeing Company leases about 117 acres from King County. The Boeing Company also leases a few acres on either side of the GTSP flume from the city of Seattle and owns the parcel containing Building 3-390 (King County parcel number 2924049106) and an adjacent parcel used for parking (King County parcel number 2924049066).

B. The Site has been the subject of numerous environmental investigations and cleanups beginning in the early 1980s. These investigations and cleanups are summarized in the following report:

North Boeing Field and Georgetown Steam Plant Summary of Existing Information and Identification of Data Gaps, dated February 2007 by Science Applications International Corporation (SAIC).

More detailed information on individual investigations and cleanups is available in the references listed in this report.

C. Environmental investigations and cleanups revealed releases of polychlorinated biphenyls (PCBs), petroleum hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), antimony, arsenic, cadmium, chromium, copper, lead, mercury, and zinc to soil; petroleum

hydrocarbons, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), antimony, arsenic, chromium, and lead to groundwater; and PCBs, PAHs, SVOCs, arsenic, copper, lead, mercury, and zinc to suspended solids in stormwater.

D. The U.S. Environmental Protection Agency (EPA) added the LDW to the federal Superfund list on September 13, 2001. EPA has entered into a Memorandum of Understanding with Ecology under which Ecology has been designated the Lead Agency to implement efforts to investigate and control sources of contamination to LDW sediments. PCBs and SVOCs have been identified as contaminants of concern in Slip 4 sediments, and Slip 4 has been identified as an early action area for sediment remediation. Releases of PCBs, PAHs, SVOCs, and metals have been identified in suspended solids in storm water and deposited in storm water piping systems from the Site. Since stormwater from the Site discharges into Slip 4, there is the potential for suspended solids in stormwater from the Site to contaminate sediment in Slip 4. Cleanup of sediment in Slip 4 has been delayed because of potential recontamination of sediment in Slip 4 that might result from contaminant releases from the Site.

E. On the basis of the facts set forth herein, Ecology has determined that a release or threatened release of hazardous substances at the Site requires remedial actions to protect human health and the environment. This Order sets forth the measures that need to be taken to perform a remedial investigation/feasibility study for the Site.

F. The PLPs have requested that Ecology perform the RI/FS for the site. The PLPs believe that inefficiencies may result if the PLPs lead the effort to conduct the RI/FS. The PLPs believe that having Ecology perform the RI/FS will expedite the RI/FS process and may result in savings to the PLPs in time and cost. Ecology has agreed to undertake conducting the RI/FS for the site using money constituting remedial action costs provided in advance by the PLPs because this may expedite the RI/FS process. Ecology may elect to discontinue performance of the RI/FS at any time and instead have the PLPs carry out, or complete carrying out, any tasks specified in Exhibit B.

VI. ECOLOGY DETERMINATIONS

A. The PLPs are “owners or operators as defined in RCW 70.105D.020(12) of a “facility” as defined in RCW 70.105D.020(4) because the PLPs owned or operated facilities on property at which, and from which, hazardous substances were released into the environment during the PLPs’ ownership or operations.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to each PLP dated March 9, 2007, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued determinations that The Boeing Company, King County, and the city of Seattle, respectively, are PLPs under RCW 70.105D.040 and notified each PLP of this determination by letter dated April 20, 2007.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require the PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Ecology is also authorized under MTCA to conduct remedial actions and require access for that purpose. RCW 70.105D.030 (1) (a), (b). Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard

assessment, remedial investigation/feasibility study or design of a cleanup action. Cleanup of contaminated sediment in Slip 4 has been delayed because of the potential for sediment recontamination as a result of contaminant releases from the Site. Investigation of the Site may reveal sources of contamination to Slip 4 that if addressed promptly will allow Slip 4 remediation to proceed. Actions that reduce or eliminate sources of contamination to Slip 4 or other releases from the Site might warrant an interim action consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Access

Each of the PLPs shall provide access to Ecology, any authorized representative of Ecology, and any party or entity directed or authorized by Ecology, to all property at the Site that the PLP either owns, controls, or has access rights to at all reasonable times, so that Ecology can perform any remedial actions that Ecology deems necessary for conducting or monitoring the RI/FS or interim action work at the Site. Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work performed for purposes of the RI/FS, and any other activity necessary to conduct the RI/FS. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial investigations will be performed pursuant to this Order.

Ecology or any Ecology authorized representative shall give reasonable notice to any PLP before entering any Site property owned or controlled by that PLP or to which that PLP has access rights unless an emergency prevents such notice. All persons who access the Site

pursuant to this Section shall comply with any applicable Health and Safety Plan(s), appropriate PLP access and security procedures, and applicable FAA requirements. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access. Any required activities that could potentially interrupt airport operations must be performed to minimize impact to airport operations. Any required activities within the Runway Safety Areas must be scheduled with the Airport a minimum of 14 days prior to the proposed work.

The Boeing Company's Project Coordinator or other representative may accompany Ecology's representative(s) at all times at property owned or operated by The Boeing Company for purposes of security and compliance with facility and work area health and safety precautions. Any photography, video or audio recording of any activities at property owned or operated by The Boeing Company may be reviewed by The Boeing Company, to enable The Boeing Company to make a claim of business confidentiality related to any such photographs or recordings. In the event Ecology receives a public disclosure request for information related to this Site, The Boeing Company agrees not to assert any business confidentiality claim with regard to any geologic, hydrologic or analytical data.

PLPs shall provide information to Ecology and any Ecology authorized representatives regarding the nature and location of all utilities, including but not limited to buried utilities, in areas of the site where RI/FS activities will be conducted. If requested by Ecology, PLPs shall assign staff with relevant training and knowledge of utilities to escort Ecology staff and any Ecology authorized representatives when they enter the Site to conduct RI/FS related activities. PLPs shall indemnify, and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from disturbing, damaging or otherwise coming in contact with utilities on the Site.

B. Contribution to Remedial Action Costs for Future Work at Site

1. Within 30 days of the Effective Date of this Order, The Boeing Company, King County and the City of Seattle shall provide funds to Ecology in accordance with the "Georgetown Steam Plant/N. Boeing Field Site Funding Agreement." The money provided pursuant to this agreement will constitute payment of remedial action costs for future state-conducted remedial action at the Site. Ecology intends to use the money to perform remedial action at, on or for the Site, including but not limited to a remedial investigation, feasibility study, and interim actions the agency deems necessary or appropriate to perform under WAC173-340-430).

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

Ecology reserves the right to recover from the PLPs all remedial action costs Ecology incurs at the Site, beyond those paid for with funds provided pursuant to paragraph VI.B above. These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550 (2). PLPs shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, and identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared

quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Pursuant to RCW 70.105D.055, Ecology also has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, PLPs shall not perform any remedial actions at the Site unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Mark H. Edens
Washington State Department of Ecology
Northwest Regional Office
Toxics Cleanup Program
3190 – 160th Avenue S.E.
Bellevue, WA 98008-5452
Telephone: 425-649-7070

The project coordinators for the PLPs are:

[Name]
[Address]
[Telephone]

The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all communications, including reports and other documents, concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and PLPs may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other parties.

E. Public Participation

A public participation plan is required for this Site. Ecology has developed a public participation plan in conjunction with the PLPs, which is included as Exhibit C. Exhibit C is incorporated by reference and is an integral and enforceable part of this Order.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs shall cooperate with Ecology, and shall:

1. Notify Ecology's project coordinator five business days prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify PLPs prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

2. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

3. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. South Park Library
8604 Eight Ave S. Cloverdale St.
Seattle, WA 98108
- b. Ecology's Northwest Regional Office
3190 - 160th Avenue S.E.
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports; supplemental remedial planning documents;

and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

F. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order. Upon request of Ecology, PLPs shall make all records available to Ecology and allow access for review within a reasonable time. In the event Ecology receives a public disclosure request for information related to this Site, Ecology agrees to notify the Boeing Company in order to allow the Boeing Company to oppose release of records pursuant to RCW 42.56.540. The Boeing Company agrees not to assert any business confidentiality claim with regard to any geologic, hydrologic or analytical data,

G. Resolution of Disputes

1. In the event a dispute arises regarding access to the Site by Ecology or its authorized representatives the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of the Ecology project coordinator's decision regarding a Site access dispute, PLPs have fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. PLPs may then request Ecology management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section

Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of PLP's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

H. Comment and Review by PLPs

Ecology shall provide copies of the following documents (list specific reports, etc. that would be produced for the RI/FS and that Ecology would want to submit to the PLPs for review and comment).

Supplemental Data Gaps Report

Remedial Investigation Work Plan

Remedial Investigation Work Plan Amendments

Remedial Investigation Report

Feasibility Study Report

Additional documents may be provided for review at Ecology's discretion.

PLPs may submit comments on documents submitted to them for review and comment no later than 30 days after receiving the documents from Ecology. The time limits for document review may be extended by written permission from Ecology. Ecology will consider the PLPs' timely submitted comments, and may incorporate them into the documents or make changes to the documents based on them as deemed appropriate by Ecology.

I. Amendment of Order

This Order may be formally amended only by the written consent of both Ecology and the PLPs. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. Ecology may elect to discontinue performance of the RI/FS at any time and instead have the PLPs carry out, or complete carrying out, the RI/FS or interim action(s).

J. Endangerment

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

K. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. In addition, Ecology will not take additional enforcement actions against PLPs regarding remedial actions required by this Order, provided PLPs comply with this Order. Ecology reserves its rights under Chapter 70.105D RCW, including the right to require remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

L. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by any of the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to any PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, all PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, a PLP shall notify Ecology of said transfer. Upon transfer of any

interest, a PLP shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

M. Indemnification

PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising or resulting from entry into and implementation of this Order, or from Ecology's or its agents' entry onto the Site and performance of tasks necessary to complete the RI/FS for the site.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon PLP's receipt of written notification from Ecology that Ecology has completed the RI/FS or interim action(s) and access for the purposes of performing the RI/FS is no longer required.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

C. In the event PLPs refuse, without sufficient cause, to comply with any term of this Order, PLPs will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

2. Civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

The Boeing Company

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

[Name of signatory]
[Title of signatory]
[Location]
[Telephone]

Robert Warren, P.Hg., MBA
Regional Section Manager
Toxics Cleanup Program
Northwest Regional Office
Telephone: 425-649-7054

King County

[Name of signatory]
[Title of signatory]
[Location]
[Telephone]

The city of Seattle

[Name of signatory]
[Title of signatory]
[Location]
[Telephone]